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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,987	10/18/2006	Ingo Schwirtlich	06093	8865
23338 7590 12/08/2010 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314			EXAMINER SONG, MATTHEW J	
			ART UNIT 1714	PAPER NUMBER
			MAIL DATE 12/08/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/597,987

**Applicant(s)**

SCHWIRTLICH ET AL.

**Examiner**

MATTHEW J. SONG

**Art Unit**

1714

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 25-45.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Matthew J Song/  
Examiner, Art Unit 1714

Continuation of 3. NOTE: Claim 25 has been amended to incorporate the limitations of dependant claim 35, however the amendment creates new issues regarding the remaining dependant claims because the combination of limitation was not previously considered. Therefore, the amendmnt would require further search and/or consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 11/15/2010 have been fully considered but they are not persuasive.

Applicant's argument that a pipe is a hollow cylinder is noted but not found persuasive. First, while pipes are known to be hollow cylindrical objects. Pipes are also known as hollow means for conducting liquid, solids or gases based on a dictionary definition. Thus, pipes are not limited to cylindrical objects. The Examiner suggests amending the claims to limit pipes to cylindrical objects to clarify applicant's claimed shape. Applicant's argument that the receiving chamber does not read on a pipe is not persuasive because the chamber is a hollow member for conducting solids, thus the broadest reasonable interpretation of a pipe system would include the receiving chamber.

Applicant's argument that Freedman et al does not teach mixing regularly shaped and irregularly shaped particles is noted but not found persuasive. The Examiner admits the Freedman does not explicitly teach the combination, however Freedman et al does teach supplying irregular or regular shaped objects. Thus one of ordinary skill in the art would have found it obvious to combine known equivalents suitable for their intended purpose. Furthermore, combinations of regularly shaped and irregularly shaped particles is known in the art to be used to form silicon melts, thus the combination of regularly shaped and irregularly shaped particles would have been obvious to one skilled in the art. As to the arguments regarding Arvidson, the Examiner is merely relying on Arvidson to show that combinations of regular and irregularly shaped particles are known in the art to be used to form silicon melts of higher packing density. The Examiner maintains that the combination of known materials, regular and irregular shaped particles, would have been prima facie obvious to one of ordinary skill in the art in view of Freedman which teaches an apparatus suitable for regular and irregular shaped particles, and in view of Arvidson et al which teaches forming a melt from regular and irregular shaped particles. Applicant has failed to rebut the Examiner's position, thus the rejection is maintained..